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PP v. MOHAMED SHAHABUDDIN MOHAMED ALI & ORS

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
AHMADI ASNAWI JCA
KAMARDIN HASHIM JCA
B [CRIMINAL APPEAL NO: P-05-388-08-2017]
17 APRIL 2018

CRIMINAL PROCEDURE: *Appeal – Competency – Ruling by trial judge for accused persons to enter defence on amended charge – Appeal against ruling by trial judge – Whether constituted final order – Whether decision within meaning of s. 3 of Courts of Judicature Act 1964 – Whether disposed of rights of parties – Whether appeal competent*

The respondents were jointly charged with murder under s. 302 of the Penal Code ('the PC') read together with s. 34 of the PC. At the end of the prosecution's case, the trial judge held that the prosecution failed to establish a *prima facie* case of murder and consequently, the charge was reduced to one of culpable homicide not amounting to murder under s. 304(a) read together with s. 34 of the PC. The amended charge was read out to all the respondents to which they were scheduled to plead on the amended charge. However, the prosecution filed the notice of appeal against the decision of the trial judge to the Court of Appeal. The trial was thus postponed pending the disposal of the appeal. At the outset of the appeal, the respondents raised a preliminary objection stating that the prosecution had no right to appeal because the trial of the respondents had not been finally disposed of and that the decision related to an uncompleted criminal proceeding. The ruling of the trial judge in calling the respondents to enter their defence on the amended charge does not constitute a final order. The respondents thus argued that the High Court should be allowed to hear the respondents' defence. The issue for determination in this appeal was whether the decision of the trial judge at the close of the prosecution's case in reducing the charge against the respondents and in calling the respondents to enter their defence on the said amended charge was appealable to the Court of Appeal.

Held (striking out appeal; remitting case to High Court for defence to be heard on amended charge)

Per Mohd Zawawi Salleh JCA delivering the judgment of the court):

(1) Decisions of the High Courts have generally been held to be appealable only if they have three attributes, *ie*, they must be final in effect, definitive of the rights of the parties, effectively dispose of a substantial part of the relief claimed in the main proceedings and it does not leave anything to be done in the trial with respect of the merits of the case. The right of appeal against any decision of the High Court in respect of

criminal matters does not include any ruling made in the course of a trial or hearing of any cause or matters which does not finally dispose of the rights of the parties. In a broad term, a final decision is one that disposes of a cause on its merits and leave no question open for judicial determination. (paras 14, 15 & 25)

(2) The decision of the trial judge was not a decision within the meaning of s. 3 of the Courts of Judicature Act 1964 and, therefore, was not appealable. The decision had not finally disposed of the rights of the parties. The trial judge had not made a final determination of the rights of the parties at that stage. The trial judge has to hear the respondents' defence and make a decision pursuant to s. 182A of the Criminal Procedure Code. Only a decision at the close of the defence case would effectively dispose the rights of the parties. Further, to have a final decision in this case, the respondents must be convicted and sentenced or discharged and acquitted, as the case may be. It would be incongruous to allow the prosecution to appeal to this court before the final judgment was meted out by the trial court. (paras 23 & 24)

(3) Criminal trials must begin and conclude without unreasonable delay. Appeals should not be entertained before a trial has run its course. It is therefore, in the interest of justice that finality should be reached in criminal cases and that the trial should not be allowed to drag on indefinitely. Interrupting and delaying a criminal trial is, in itself, undesirable especially if it means that witnesses have to be brought back after a break of several months. Further, piecemeal appeal can be costly and inefficient. One can imagine how long it would take to resolve a case if the parties could immediately appeal consequent upon to every decision leading up to trial. It would cause a 'tsunami' of appeals and the Court of Appeal would be swamped. (paras 28-30)

(4) In the circumstances, the preliminary objection by the respondents was sustained. The appeal was held to be incompetent because the findings of the trial judge at the end of the prosecution's case had not finally disposed of the rights of the parties in the trial. (para 32)

Bahasa Malaysia *Headnotes*

Responden-responden dipertuduh secara bersesama atas kesalahan membunuh bawah s. 302 Kanun Keseksaan ('KK') dibaca bersama-sama dengan s. 34 KK. Di akhir kes pendakwaan, hakim bicara memutuskan pihak pendakwaan gagal membuktikan kes *prima facie* membunuh dan dengan itu, pertuduhan dikurangkan menjadi kesalahan homisid salah yang tidak terjumlah pada membunuh bawah s. 304(a) dibaca bersama-sama dengan s. 34 KK. Pertuduhan terpinda dibacakan kepada semua responden terhadap mana mereka dijadualkan akan memasukkan pengakuan atas pertuduhan dipinda itu. Walau bagaimanapun, pihak pendakwaan memfailkan notis rayuan terhadap keputusan hakim bicara ke Mahkamah Rayuan. Oleh itu, perbicaraan ditangguhkan sehingga pemutusan rayuan. Di permulaan rayuan,

responden-responden membangkitkan bantahan awalan menyatakan bahawa pendakwaan tiada hak merayu kerana perbicaraan responden-responden belum diputuskan secara muktamad dan bahawa keputusan tersebut berkait dengan prosiding jenayah yang belum selesai. Keputusan hakim bicara untuk responden-responden membela diri atas pertuduhan dipinda tidak membentuk perintah muktamad. Responden-responden, oleh itu, menghujahkan bahawa Mahkamah Tinggi wajar dibenarkan mendengar pembelaan responden-responden. Isu untuk pertimbangan dalam rayuan ini adalah sama ada keputusan hakim bicara di akhir kes pendakwaan dalam mengurangkan pertuduhan terhadap responden-responden dan memanggil responden-responden membela diri atas pertuduhan dipinda, boleh dirayu ke Mahkamah Rayuan.

Diputuskan (membatalkan rayuan; mengembalikan kes ke Mahkamah Tinggi bagi pembelaan dibicarakan atas pertuduhan dipinda)

Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Keputusan Mahkamah Tinggi secara amnya diputuskan boleh dirayu hanya jika ia mempunyai tiga perkara, iaitu, ia mempunyai kesan muktamad di mana hak pihak-pihak diputuskan secara muktamad, memutuskan secara efektif sebahagian besar relif yang dituntut dalam prosiding dan tidak meninggalkan apa-apa yang perlu dilakukan dalam perbicaraan yang berkaitan dengan merit kes tersebut. Hak merayu terhadap keputusan Mahkamah Tinggi berkait dengan perkara jenayah tidak termasuk apa-apa perintah yang dibuat semasa perbicaraan atau mendengar apa-apa kausa atau perkara yang tidak memuktamadkan hak pihak-pihak. Secara luasnya, keputusan muktamad adalah sesuatu yang menentukan kausa atas merit dan tidak meninggalkan apa-apa persoalan terbuka untuk penentuan kehakiman.

(2) Keputusan hakim bicara bukan keputusan dalam maksud s. 3 Akta Mahkamah Kehakiman 1964 dan, oleh itu, tidak boleh dirayu. Keputusan tersebut tidak memutuskan hak pihak-pihak secara muktamad. Hakim bicara juga tidak membuat penentuan terakhir hak pihak-pihak pada peringkat itu. Hakim bicara perlu mendengar pembelaan responden-responden dan membuat keputusan menurut s. 182A Kanun Tatacara Jenayah. Hanya keputusan di akhir kes pembelaan akan memutuskan hak pihak-pihak secara efektif. Selanjutnya, untuk keputusan muktamad kes ini, responden-responden perlu disabitkan dan dijatuhkan hukuman atau dilepaskan dan dibebaskan, sewajarnya. Tidak kena pada tempatnya untuk membenarkan pihak pendakwaan merayu ke mahkamah ini sebelum penghakiman muktamad dijatuhkan oleh hakim bicara.

(3) Perbicaraan jenayah mesti bermula dan ditamatkan tanpa kelengahan yang tidak munasabah. Rayuan-rayuan tidak sepatutnya dilayan sebelum perbicaraan selesai. Oleh itu, kepentingan keadilan menuntut kemuktamadan dicapai dalam kes jenayah dan perbicaraan tidak wajar dibenarkan meleret bagi tempoh yang tidak terhad. Mencelah dan melambatkan perbicaraan jenayah sahaja tidak diingini khususnya apabila ia bermaksud bahawa saksi-saksi perlu dikemukakan semula selepas tempoh beberapa bulan. Selanjutnya, rayuan sedikit demi sedikit boleh menjadi mahal dan tidak efisien. Boleh dibayangkan berapa lama ini akan berlanjutan untuk menyelesaikan sesuatu kes jika pihak-pihak boleh merayu segera selepas setiap keputusan sehingga ke peringkat perbicaraan. Ia akan mengakibatkan 'tsunami' rayuan-rayuan dan Mahkamah Rayuan akan dibanjiri.

(4) Dalam keadaan tersebut, bantahan awalan responden-responden dikekalkan. Rayuan ini diputuskan tidak kompeten kerana dapatan hakim bicara di akhir kes pendakwaan tidak memutuskan hak pihak-pihak secara muktamad dalam perbicaraan tersebut.

Case(s) referred to:
Dato' Seri Anwar Ibrahim v. PP [2010] 9 CLJ 625 FC ***(refd)***
Karpal Singh Ram Singh v. PP [2012] 5 CLJ 537 FC ***(refd)***
Koh Zhan Quan Tony v. PP & Another Motion [2006] SGCA 17 ***(refd)***
Mohamad Ridzuan Zamhor lwn. PP [2018] 4 CLJ 315 CA ***(refd)***
PP v. Hii Tiong Hsia & Anor [2014] 1 LNS 1734 CA ***(refd)***
PP v. Letchumanan Suppiah [2009] 5 CLJ 652 FC ***(refd)***
PP v. Musdar Rusli [2017] 7 CLJ 703 CA ***(refd)***
Saad Abas & Anor v. PP [1998] 4 CLJ 575 CA ***(refd)***
Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd [2003] 2 CLJ 177 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 50(1)
Criminal Procedure Code, ss. 112, 182A
Penal Code, ss. 34, 302, 304(a), 309

For the prosecution - Faizah Mohd Salleh; DPP
For the respondent - RSN Rayer; M/s R Nethaji Rayer & Co

[Editor's note: For the High Court judgment, please see PP v. Mohamed Shahabuddin Mohamed Ali & Ors [2017] 1 LNS 1308 (remitted).]

Reported by S Barathi

A

JUDGMENT

Mohd Zawawi Salleh JCA:

Introduction

[1] The legal issue in the instant appeal is quite narrow, namely, whether
B the decision of the learned trial judge at the close of the prosecution's case in reducing the charge against the respondents from the offence of murder under s. 302 of the Penal Code read together with s. 34 of the same Code to one of culpable homicide not amounting to murder under s. 304(a) of the Penal Code read together with s. 34 of the same Code and in calling the
C respondents to enter their defence on the said amended charge is appealable to the Court of Appeal.

The Factual Antecedents

[2] In order to place the issue in this instant appeal in its proper
D perspective, it is necessary to recount briefly the history of the proceedings.

[3] The respondents were jointly charged with the murder of one Chew Hup Kheng, an offence punishable under s. 302 of the Penal Code read together with s. 34 of the same Code. The offence was alleged to have been committed on 1 May 2015, at about 7.05am, at the roadside in front of
E Chulia Court, Lebuh Chulia, in the District of Timur Laut, Penang.

[4] The trial of the prosecution's case took eight days and 11 witnesses were called to testify for the prosecution.

[5] At the close of the prosecution's case, the parties filed their written
F submissions as directed by the learned trial judge and the oral arguments were heard on 2 June 2017.

[6] After subjecting the prosecution's case to a maximum evaluation, the learned trial judge held that the prosecution had failed to establish a *prima facie* case of murder under s. 302 of the Penal Code. Consequently, the
G learned trial judge had reduced the charge from the offence of murder under s. 302 of the Penal Code read together with s. 34 of the same Code to one of culpable homicide not amounting to murder under s. 304(a) of the Penal Code read together with s. 34 of the same Code.

[7] The amended charge was read out to all the respondents on 26 July
H 2017. They were scheduled to plead on the amended charge on 7 September 2017. The prosecution, however, on 7 August 2017, had filed the notice of appeal against the decision of the learned trial judge to the Court of Appeal. The trial was postponed pending the disposal of the PP's appeal in the Court of Appeal.

I

Preliminary Objection

[8] At the outset of the hearing of this appeal, learned counsel for the respondents raised a preliminary objection stating that the Public Prosecutor ("PP") had no right to appeal because the trial of the respondents had not been finally disposed of yet. The decision relates to an uncompleted criminal proceeding. The ruling of the learned trial judge in calling the respondents to enter their defence on the amended charge does not constitute a final order. The High Court should be allowed to hear the respondents' defence.

[9] Learned counsel further contended that any dissatisfaction on the part of the PP against the said ruling may be brought up by filing an appeal at the end of the whole case. The appeal is premature, if not, unnecessary.

[10] In reply, the learned Deputy Public Prosecutor (DPP), in the person of Puan Faizah binti Mohd Salleh, spiritedly and passionately argued that the decision of the learned trial judge is indeed appealable. According to learned DPP, the prosecution has a right of appeal against the decision of the learned trial judge since by calling the respondents to enter their defence on the reduced charge, it would mean that they were acquitted from the original charge of murder. In other words, it was submitted that there was already a final disposal of the matter regarding the murder charge. The PP, as a dissatisfied party, could appeal against the impugned decision to the Court of Appeal within the meaning of s. 50(1) of the Courts of Judicature Act 1964 ("CJA").

[11] In support of her submission, reliance was placed on the decisions in *PP v. Letchumanan Suppiah* [2009] 5 CLJ 652, *Koh Zhan Quan Tony v. PP & Another Motion* [2006] SGCA 17 [reported in [2006] 2 SLR 830].

Our Findings

[12] Section 50(1) of the Courts of Judicature Act 1964 ("CJA") provides the appellate jurisdiction of the Court of Appeal as follows:

> Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court:
>
> (a) In the exercise of its original jurisdiction; and
>
> (b) In the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Session Court.

[13] The word "decision" is defined in s. 3 of the CJA as follows:

> 'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

[14] Clearly, the right of appeal against any decision of the High Court in respect of criminal matter does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties (See *Syarikat Tingan Lumber Sdn Bhd v. Takang Timber Sdn Bhd* [2003] 2 CLJ 177; [2003] 2 MLJ 495; *Dato' Seri Anwar Ibrahim v. PP* [2010] 9 CLJ 625; *Mohamad Ridzuan Zamhor lwn. PP* [2018] 4 CLJ 315; [2018] 2 AMR 17).

[15] The concept of a "final decision" seems straightforward enough. In a broad term, a final decision is one that disposes of a cause on its merits and leaves no question open for judicial determination. In practice, however, there is undoubtedly some confusion existing as what constitutes a final decision. In this connection, legal precedent is very useful guide in deciding this matter.

[16] In *Saad Abas & Anor v. PP* [1998] 4 CLJ 575; [1999] 1 MLJ 129, the accused were acquitted by the Magistrate's Court at the close of the prosecution's case on a charge under s. 354 of the Penal Code. On appeal to the High Court, the accused were ordered to enter their defence on the said charge. The accused being dissatisfied with the High Court decision, applied for leave to appeal to the Court of Appeal. The Court of Appeal, however, ruled at p. 586 (CLJ); p. 137 (MLJ), as follows:

> The order of the High Court in the present case for which leave to appeal is sought was that the applicants were to enter their defence. At the state or making the order, certainly it has no finality in its intent. Only after the close of the defence as a result of that order will there be finality. Only after the close of the defence will there be a decision to 'affect the event of the appeal', meaning that the defence story will finally determine the result of the whole case which was the purpose of the appeal.

The Court of Appeal further ruled at p. 587 (CLJ); p. 138 (MLJ):

> So, for the purpose of s. 50(2) (of the CJA), this Court has to first ascertain whether the 'decision' of the High Court in ordering the applicants before us to enter their defence was a ruling that had the effect of finally disposing of their rights. Certainly not, and it would only happen after a decision had been made at the close of the defence.

[17] In the unreported case of *PP v. Hii Tiong Hsia & Anor* [2014] 1 LNS 1734 (Criminal Appeal No. Q-05-(S)-96-04-2013), an appeal was filed by the PP against the decision of the High Court in reducing the charge against the third and sixth accused from a charge under s. 302 of the Penal Code read together with s. 34 of the same Code to s. 304(a) read together with s. 34 of the Code at the close of the prosecution's case. Altogether six accused persons were jointly charged in the case but four of them were acquitted and discharged at the close of the prosecution's case. No appeal was filed against the acquittal of the four accused persons.

[18] The Court of Appeal went on to hear the appeal on the issue whether the prosecution had adduced sufficient evidence under s. 302 of the Penal Code to establish a *prima facie* case against the two respondents at the end of the prosecution's case. The court ruled that the trial judge had the power to do what he did in the case that is to amend the charge to a lesser offence under s. 304(a) of the Penal Code.

[19] The court went further and stated that the more important issue in the appeal was whether the decision or ruling of the learned High Court Judge is appealable at all and ruled that the appeal was premature. The Court of Appeal further opined that once the court alters or adds a charge, including an amendment to the charge, the trial should proceed immediately on the amended or added charges, unless for some reasons the court considers that to proceed immediately with the trial will prejudice the accused in his defence (see para. 21 of the judgment).

[20] The PP's appeal was dismissed on the ground that the decision or ruling of the High Court Judge was not appealable because it was a decision or ruling made in the course of trial or hearing which does not finally dispose of the rights of the parties.

[21] It is pertinent to note that the decision of the Court of Appeal was affirmed by the Federal Court on 8 September 2015 in Case No.05-158- 07-2014 (coram: Md Raus bin Sharif CJ, Abdull Hamid bin Embong, Ahmad bin Haji Maarop, Zainun binti Ali, Abu Samah bin Nordin FCJJ).

[22] In *Dato' Seri Anwar Ibrahim v. PP* [2010] 9 CLJ 625; [2010] 6 MLJ 585, the same issue ie, whether the decision made in the course of trial or hearing which does not finally dispose of the right of the parties is appealable was canvassed and ruled upon. In that case, learned counsel for the appellant had applied for a statement of the complainant (PW1) recorded under s. 112 of the CPC to be produced for examination by the appellant. The learned trial judge, in that case, dismissed the application. The appellant appealed to the Court of Appeal and before the Court of Appeal, the prosecution took the stand that the ruling of the trial judge under challenge does not fall within the term 'decision' as defined in s. 3 of the Courts of Judicature Act 1964 ('CJA') and hence not appealable. The Court of Appeal agreed with the prosecution. The appellant then appealed to the Federal Court. In hearing the appeal, the Federal Court visited s. 50 of the CJA which provides the jurisdiction of the Court of Appeal to hear any appeal against any decision made by the High Court. The Federal Court then refers to s. 3 of the CJA 1964 which defines the meaning of the word 'decision' used in s. 50(1) of CJA. Section 3 of the CJA defines the word 'decision' to mean judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the right of the parties. The Federal Court ruled that the decision was not appealable because it is a decision or ruling made in the course of trial or hearing which does not finally dispose of the rights of the parties.

[23] So too here. We are of the considered opinion that the decision of the learned trial judge in reducing the charge from the offence of murder under s. 302 of the Penal Code to one of culpable homicide under s. 304(a) of the same Code and in calling the respondents to enter their defence on the amended charge is not a decision within the meaning of s. 3 of the CJA and, therefore, is not appealable.

[24] In this instant appeal, the respondents were scheduled to plead on amended charge on 7 September 2017. However, the trial was postponed due to the appeal filed by the PP against the decision of the learned trial judge in amending the charge. Certainly, the decision of the learned trial judge has not finally dispose of the rights of the parties. The learned trial judge had not made a final determination of the rights of the parties at this stage. Something still had to be done by the learned trial judge, ie, to hear the respondents' defence and make a decision pursuant to s. 182A of the Criminal Procedure Code. Only a decision at the close of the defence case would effectively dispose of the rights of the parties. Further, to have a final decision in this case, the respondents must be convicted and sentenced or discharge and acquitted, as the case may be. It would, in our view, be incongruous to allow the PP to appeal to this court before the final judgment is meted out by the trial court.

[25] Our courts have applied a "salutary general rule" in criminal and civil proceedings for many years that appeals are not entertained piecemeal. Decision of the High Courts has generally been held to be appealable only if they have three attributes. They must be final in effect, definitive of the rights of the parties, effectively dispose of a substantial part of the relief claimed in the main proceedings and it does not leave anything to be done in the trial with respect of the merits of the case. In other words, the rule, in general, permits an appeal to be taken only from a final decision which disposes of all the issues presented in the trial. Quite obviously, all the issues in the case at bench were not disposed of if the respondents have yet to testify in their defence.

[26] The PP would not be prejudiced because at the end of the case, it would still have the right to appeal to the Court of Appeal and further to the Federal Court against the decision of the learned trial judge. The PP may still impugn the ruling of the learned trial judge as part of its grounds of appeal.

[27] For example, in *PP v. Musdar Rusli* [2017] 7 CLJ 703, the respondent was originally charged with (i) murder under s. 302 of the Penal Code and (ii) an attempt to commit suicide, an offence under s. 309 of the same Code. However, at the end of the prosecution's case, the charge was amended by the learned Judicial Commissioner to one under culpable homicide not amounting to murder under s. 304(a) of the Penal Code. The respondent forthwith pleaded guilty to the said amended charge and was sentenced to 25 years imprisonment for the offence under s. 304(a) of the Penal Code. Dissatisfied, the PP appealed to the Court of Appeal. The issue before the

Court of Appeal is whether the respondent was rightly convicted for the reduced charge. The Court of Appeal held that where such injuries which were intentionally inflicted by the respondent on the deceased were sufficient in the ordinary course of nature to cause death, it would indeed be a travesty of justice to hold that the respondent was guilty only of the lesser offence of culpable homicide not amounting to murder and punishable under s. 304 of the Penal Code. The decision of the High Court Judge was set aside and substituted with a conviction for murder, punishable under s. 302 of the Penal Code. The respondent was sentenced to death.

[28] Criminal trials must begin and conclude without unreasonable delay. Appeals should not be entertained before a trial has run its course. It is therefore, in the interest of justice that finality should be reached in criminal case and that the trial should not be allowed to drag on indefinitely.

[29] Interrupting and delaying a criminal trial, is in itself undesirable especially if it means that witnesses have to be brought back after a break of several months.

[30] Piecemeal appeal can be costly and inefficient. One can imagine how long it would take to resolve a case if the parties could immediately appeal consequent upon to every decision leading up to trial. It would cause a "tsunami" of appeals and the Court of Appeal would be swamped.

[31] We associate ourselves with the sentiments expressed in *Karpal Singh Ram Singh v. PP* [2012] 5 CLJ 537; [2012] 5 MLJ 293, where the Federal Court stated:

> [16] The rationale for non-final decisions being non-appealable is primarily geared towards the speedy disposal of cases; such a policy prejudices nobody in light of the many complaints of ageing cases before. The explanatory notes, clarifying the amendment of s. 3 of the CJA introduced by the Amendment Act A1031 of 1998 reads:
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> > Pada masa ini, semasa mendengar kes, jika mahkamah membuat keputusan tentang kebolehterimaan apa-apa keterangan atau dokumen, pihak yang tidak berpuas hati boleh memfailkan rayuan. Jika rayuan sedemikian difailkan, mahkamah terpaksa memberhentikan pendengaran kes itu sementara menanti keputusan rayuan itu oleh mahkamah atasan. Ini menyebabkan pendengaran itu lambat selesai, lebih-lebih lagi apabila rayuan difailkan terhadap tiap-tiap keputusan yang dibuat oleh mahkamah bicara. Pindaan ini dicadangkan untuk membantu mempercepat pendengaran kes di mahkamah bicara.
>
> [17] From the above explanation it is obvious that Parliament is not oblivious to mid-stream appeals that tend to stall proceedings and delay speedy completion of cases. With justice not being served by unnecessary delays, what with the amended meaning of 'decision' being crystal clear, such technical appeal that have the effect of stalling hearings, are now

things of the past (see *Dato' Seri Anwar Ibrahim v. Public Prosecutor* [2010] 9 CLJ 625; [2010] 6 MLJ 585; *Dato' Seri Anwar Ibrahim v. Public Prosecutor* [2011] 2 CLJ 845). No appeal is permitted if viewed as incompetent and precluded by law, and with the facts as they were before us, we agree with the learned DPP that there was no finality in the decision of the Court of Appeal.

Conclusion

[32] For all these reasons, we sustained the preliminary objection taken by learned counsel for the respondents. In our view, this instant appeal was not competent because the findings of the learned trial judge at the end of the prosecution's case had not finally disposed of the rights of the parties in the trial.

[33] Consequently, we struck out the appeal and made a further order that the case be remitted back to the High Court for the same learned trial judge to hear the defence of the respondents on the amended charge. So ordered.